IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO. 898 OF 2001

IN

SUMMARY SUIT NO. 1721 OF 2001

Hatim Sutterwala .....Plffs.
vs.
Venkatesh Chemi-colour Co.
and ors. .....Defnds.

Mr.Cyrus Ardeshir i/b. Rustamji & Ginwala
for the plaintiffs.
Mr.Hiralal Thakker a/w. M.K. Nesari
for defendant no.1 to 3, 5, 7 and 8.
Mr. P.F. Fredrick i/b. A.N. Joshi
for defendant no.4 and 6.

CORAM: S.U. KAMDAR, J.

DATE : 6th September, 2005.

P.C. :.

1. The present suit is filed on five dishonoured cheques which are annexed as Exhibits-F, G, H, I and J to the plaint. The total claim in the present suit is for Rs.31,39,809/- being principal amount of Rs.30.00 lacs and interest thereon of

Rs.1,39,809/-.

2. Learned counsel for the defendant no.1, to 3, 5,7 and 8 has contended that the cheques on the basis of which the present suit is filed is admittedly handed over by the plaintiff to the defendant being un-dated cheque as mentioned in para-2 of the said plaint and thus it has been contended that the plaintiff had no authority to fill in the dates inrespect of the said cheques. It has been further contended that the said cheques were given in advance in anticipation of the amount to be received as finance from the plaintiff. However the plaintiff did not give any finance to the defendant and therefore the cheque ought not have been encashed by the plaintiff. Thus there is no consideration in respect of the issuance of the said five cheques.

3. In support of the aforesaid argument the learned counsel for the plaintiff has contended that the provisions of S.20 of the Negotiable Instruments Act applies only in cases where the

document is a negotiable instrument and in absence of such a negotiable document the provisions of s.20 which inter-alia gives an authority to a party to fill in the blank is not applicable. He has further contended that the present cheques being admittedly cross order cheques the same are not a negotiable instrument under the provisions of S.13 Sub-section 1 read with Explanation-I thereof He has placed reliance upon the judgment of the division bench of this court in the case of **Tarachand Kevalram v. Sikri Brothers reported in AIR 1953 Bombay 290 (Vol.40, C.N.91) and the judgment of the English Court in the case of Wilson and Meeson (a firm) v. Pickering reported in C.A.1946 page 422.** In my opinion the contention raised is without any merits. Firstly though the cheques are given as a blank dated the case of the plaintiff is that, that the date has been fill in by the plaintiffs on the instructions of the defendant. Secondly even if the the cheques is a cross order cheque merely because the same is a payee account cheque the same does not secure to be negotiable instrument. In my opinion Explanation-1

to S.13 cannot control the main provisions of s.13(1) and thus the cheques are negotiable instruments. The cheque is defined under section 6 of the Negotiable Instrument Act and the same clarifies that the cheque is a bill of exchange drawn on a specified banker and not expressly payable otherwise on demand. In that light of the matter I do not find any substance in the contentions advanced by the learned counsel.

4. In so far as the aforesaid two judgments cited by the learned counsel for the defendant, I am of the opinion that in view of the case of the plaintiffs that the dates in the cheques are filled in on the specific instruction of the defendant, the same have no application to the facts of the present case. Learned counsel appearing for defendant no.4 to 6 has no submission to make insupport of the submission for learned counsel for defendant no.1 to 3, 5, 7 and 8.

5. However with a view to grant an opportunity to defend the suit, I direct the defendants to deposit in this court Rs.30.00 lacs within a period of 4 weeks failing which the plaintiff will be entitled to the decree. The amount so deposited will be invested by the Prothonotary and Senior master in fixed deposits of any nationalised bank initially for a period of three years and renew the same from time to time till further orders.

6. If the amount is paid as aforestated, then suit is transferred to the list of Commercial Causes. Written statement or points of defence to be filed four weeks from today. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.

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